

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	ENFORCEMENT TRACKING NOs.
	*	WE-NP-98-0057
ALLEN CANNING COMPANY	*	WE-PP-00-0038
	*	WE-COA-01-0552
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	AGENCY INTEREST NUMBER
LA. R.S. 30:2001, <u>ET SEQ.</u>	*	2433

SETTLEMENT

The following Settlement is hereby agreed to between **ALLEN CANNING COMPANY** ("Respondent") and the Louisiana Department of Environmental Quality ("Department"), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, et seq., (the "Act").

I

Respondent is a foreign corporation that operates a vegetable canning facility at 1581 La. Hwy. 114 near Hessmer in Avoyelles Parish, Louisiana.

II

On or about April 6, 1998, the Department issued **NOTICE OF POTENTIAL PENALTY NO. WE-NP-98-0057** to Respondent. The allegations that form the basis of that enforcement action are:

"On or about November 18, 1996, an inspection of the Respondent's facility was performed to determine the degree of compliance with the Louisiana Environmental Quality Act and Regulations. While the Department's investigation is not yet complete, the following violations were noted during the course of the inspection:

Respondent did cause or allow the unauthorized discharge of inadequately treated process wastewater from the above-referenced canning plant. At the time of the inspection, approximately 1.2 MGD of wastewater was being discharged into German Bayou, thence into Choctaw Bayou. This wastewater and Choctaw Bayou were dark-pink to purple in color with a septic odor. Laboratory results indicated that the wastewater contained BOD and TSS concentrations of 340 ppm and 270 ppm, respectively. This unauthorized discharge of inadequately treated wastewater is in violation of the terms and conditions of Part I of LPDES permit LA0003344, La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.1113.B.1.c, LAC 33:IX.1113.B.2.a, and LAC 33:IX.2355.A.

A file review of the Respondent's Discharge Monitoring Reports (DMRs) from January 1994 to April 1996 revealed that Respondent caused or allowed the discharge of inadequately treated wastewater to waters of the state and has exceeded the effluent limitations of LWDPS permit WP 3517. Specifically, the DMRs submitted by the Respondent revealed the following violations:

Year/ Month	Parameter	Reported Value	Number of Excursions	Comments
1996/ April	T°C	38.3 ¹		Not signed or dated (N/S)
March				N/S
February	TSS	300 ^{2,3}	2	N/S
	BOD	105 ^{2,4}	2	
January	TSS	360	4	N/S
	BOD	239	2	
1995/ December	TSS	270	1	N/S
	BOD	84	1	
November	TSS	190	1	N/S
	BOD	315	1	
October				N/S
September				N/S
August				N/S, 1/month sampling ⁵
July	TSS	68	1	N/S, TSS excursion reported is not indicated by DMR.

June				N/S
May				N/S
April				N/S
March				N/S
February				N/S
January	TSS	230	1	N/S
	BOD	47	1	
1994/ December	TSS	370	2	N/S
	BOD	61	1	
November	TSS	210	2	N/S
	BOD	82	2	
October ⁶				N/S
September				N/S
August				N/S, 1/month sampling ⁵
July				N/S, 1/month sampling ⁵

1-- All DMR's over the period of record indicate a Temperature Daily Maximum required in WP 3517 as 38.3°C. WP 3517 limits the temperature to less than 32.3°C. There were no excursions of this parameter at the permitted value.

2-- Parameter units are mg/L.

3-- WP 3517 limits the Daily Maximum of TSS at 125 mg/L.

4-- WP 3517 limits the Daily Maximum of BOD at 45 mg/L.

5-- WP 3517 requires monitoring to be conducted 2/month.

6-- BOD Daily Maximum limits are represented on the DMR's as 100 mg/L for the period January-October 1994. The correct value for this parameter is 45 mg/L.

7-- WP 3517 limits the Daily Maximum of pH at 9.0 standard units.

“These excursions of effluent limitations constitute violations of the terms and conditions of Parts I & II of LWDPS permit WP 3517, La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.311.A, LAC 33:IX.501.A, and LAC

33:IX.501.D.

“Further file review of the Respondent’s DMRs from January 1994 to April 1996 revealed that the Respondent failed to meet the terms and conditions of LWDPS permit WP 3517. Specifically, the DMRs submitted by the Respondent revealed that the Respondent failed to:

- A. Sign or date its DMRs for the dates indicated in the table above;
- B. Monitor according to the frequency specified in LWDPS permit WP 3517 for the dates indicated in the table above; and
- C. Increase monitoring frequency when an effluent value exceeded the daily maximum limit.

“The failure to meet the terms and conditions of Parts I & II of LWDPS permit WP 3517 as indicated in A-C above, is in violation of said permit, La. R.S. 30:2076 (A)(3), LAC 33:IX.303.H, LAC 33:IX.311.A, LAC 33:IX.311.J.6, and LAC 33:IX.501.A.

“Further file review conducted by the Department disclosed that the Respondent continued to discharge wastewater into waters of the state after the expiration of LWDPS permit WP 3517. A review of the DMRs submitted by the Respondent revealed that the Respondent did discharge wastewater during the months of June and July 1996. Any discharge from the Respondent's facility between the expiration of the LWDPS permit and the state’s assumption of the NPDES program was unauthorized. The unauthorized discharges of wastewater from the Respondent’s facility between May 27, 1996, and August 27, 1996, constitute violations of La. R.S. 30:2075, La. R.S. 30:2076 (A)(1)(a), La. R.S. 30:2076 (A)(3), LAC 33:IX.301.B.1, LAC 33:IX.501.A, LAC 33:IX.501.C, and LAC 33:IX.501.D.

“A file review of the Respondent's Discharge Monitoring Reports (DMRs) from September to December 1996 revealed that Respondent caused or allowed the discharge of inadequately treated wastewater to waters of the state, exceeded the effluent limitations of LPDES permit LA0003344, and failed to sign its September 1996 DMR. Specifically, the DMRs submitted by the Respondent revealed the following violations:

Year/ Month	Parameter	Reported Value	Number of Excursions	Comments
1996/ November	TSS	340 ^{1,2}	2	
	BOD	359 ^{1,3}	2	

October	TSS	134	1	
	BOD	123	1	
September				Not signed or dated

1-- Parameter units are mg/L.

2-- LA0003344 limits the Daily Maximum of TSS at 125 mg/L.

3-- LA0003344 limits the Daily Maximum of BOD at 100 mg/L.

“These excursions of effluent limitations and the failure to sign a DMR constitutes violations of the terms and conditions of Parts I & II of LPDES permit LA0003344, La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2355.A, and LAC 33:IX.2355.K.1.

“Respondent was issued Compliance Order WE-C-97-0109 on June 25, 1997, for the above-referenced violations. This Compliance Order mandated the Respondent to: take all steps necessary to meet and maintain compliance with LPDES permit LA0003344, meet specific interim discharge limits, submit a plan for the expeditious elimination and prevention of all non-complying discharges, and submit a written response to the Compliance Order. The Respondent did not appeal the Compliance Order; therefore, the said action is final and effective, and not subject to further administrative review.

“On or about August 20, 1997, correspondence was received from the Respondent, which outlined a comprehensive plan to upgrade the treatment systems at the facility to meet the effluent guidelines in LPDES permit LA0003344.

“Respondent was issued Amended Compliance Order WE-C-97-0109A on October 3, 1997, which incorporated the comprehensive plan and called for the submission of quarterly progress reports commencing on February 1, 1998. The Department incorporated all of the remainder of the original Compliance Order, WE-C-97-0109, as if it were reiterated therein.

“On or about February 17, 1998, a file review was conducted by the Department to determine the degree of compliance with the Louisiana Environmental Quality Act and Regulations. While the Department’s investigation is not yet complete, the following violations were noted during the course of the review:

Respondent caused or allowed the discharge of inadequately treated wastewater to waters of the state and has exceeded the interim effluent limitations established in Compliance Order WE-C-97-0109.

The non-compliance reports submitted by the Respondent revealed the following violations:

Year/ Month/Day	Parameter	Reported Value
1997/ September 5	pH	9.01 ¹
September 12	BOD	94.0 ²
October 15	BOD	188
	TSS	210 ³
October 21	pH	9.4
	BOD	224
	TSS	358
December 8	pH	9.3
	BOD	608
	TSS	270
December 15	pH	9.4
	BOD	709
	TSS	260
December 22	pH	9.4
	BOD	501
	TSS	230
December 29	pH	9.5
	BOD	539
	TSS	240
1998 January 12	pH	9.1
	BOD	225
	TSS	168
January 19	pH	9.2
	BOD	271
	TSS	344

January 26	pH	9.1
	BOD	175
	TSS	170
February 4	pH	9.2
	BOD	120
	TSS	208
February 9	pH	9.3
	BOD	105
	TSS	202

- 1- The pH effluent limit is 6.0-9.0 standard units (S.U.).
- 2- The BOD effluent limit is a Daily Maximum of 45 mg/L
- 3- The TSS effluent limit is a Daily Maximum of 125 mg/L

“These excursions of effluent limitations constitute violations of the terms and conditions of Compliance Order WE-C-97-0109, La. R.S. 30:2076 (A)(1)(a), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, and LAC 33:IX.501.D.

III

On or about May 19, 2000, the Department issued **NOTICE OF POTENTIAL PENALTY NO. WE-PP-00-0038** to Respondent. The allegations that form the basis of that enforcement action are:

“An inspection by the Department on or about October 19, 1999, revealed that the Respondent did cause or allow the discharge of inadequately treated wastewater at a discharge point other than the outfall specified in LPDES permit LA0003344. Specifically, wastewater had been discharged from Pond B into German Bayou. At the time of the inspection, the water in German Bayou was black and had a septic odor. Lab analyses of the water in the receiving stream revealed a Biological Oxygen Demand (BOD₅) value of 949 ppm, and a dissolved oxygen concentration of 0.63 ppm. The discharge of inadequately treated wastewater at a discharge point other than the outfall specified in LPDES permit LA0003344 is in violation of LPDES permit LA0003344 (Effluent Limitations: Part I, Page 2; Standard Conditions: Part III, Section A, Item 2), La. R.S. 30:2075, La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.1113 B.1.c, and LAC 33:IX.2355.A.

“Further investigation by the Department on or about October 19, 1999, revealed an adverse impact to aquatic biota in Coules de Grues and Choctaw Bayou as a result of the Respondent’s unauthorized discharge. At the time of the inspection, the water color in Coules de Grues was black and the dissolved oxygen concentration was less than 1.0 ppm. A count of the dead and/or dying fish revealed approximately 200 Buffalo (*Ictiobus sp.*). This destruction of aquatic biota is in violation of LPDES permit LA0003344 (General Conditions: Part III-section A), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.501.D, LAC 33:IX.1113.B.5, and LAC 33:IX.2355.A.

“Further investigation by the Department on or about October 19, 1999, revealed that the Respondent failed to comply with the construction schedule as required in Amended Compliance Order WE-C-97-0109A. Specifically, the Amended Compliance Order required that the construction on the upgrades to the wastewater treatment facility be completed by September 1, 1999. The failure to achieve these compliance schedule milestones is a violation of Amended Compliance Order WE-C-97-0109A, La. R.S. 30:2076 (A)(3), and LAC 33:IX.501.A.

“An inspection by the Department on or about April 12, 2000, revealed that Respondent did cause or allow the discharge of approximately 10,000 gallons of inadequately treated wastewater at a discharge point other than the outfall specified in LPDES permit LA0003344. The discharge of inadequately treated wastewater at a discharge point other than the outfall specified in LPDES permit LA0003344 is in violation of LPDES permit LA0003344 (Effluent Limitations: Part I, Page 2; Standard Conditions: Part III, Section A, Item 2), La. R.S. 30:2075, La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.1113 B.1.c, and LAC 33:IX.2355.A.

“Further inspection by the Department on or about April 12, 2000, revealed that the Respondent failed to report the above unauthorized discharge within a 24-hour period. The failure to report the spill of April 12, 2000 in a timely manner is a violation of LPDES permit LA0003344 (Reporting Requirements: Section D.6) La. R.S. 30:2025 (J)(2), La. R.S. 30:2076 (A)(3), La. R.S. 30:2076 (D), LAC 33:IX.501.A, LAC 33:I.3917.A, and LAC 33:I.3925.

“On or about May 12, 2000, a file review of Respondent’s Discharge Monitoring Reports (DMRs) and other supporting documentation submitted by the Respondent was conducted by the Department to determine the degree of compliance with the Louisiana Environmental Quality Act and Water Quality Regulations. While the Department’s investigation is not yet complete, the following violations were noted during the course of the review:

<i>Date</i>	Parameter	<i>Permit Limit</i>	Reported Data
3/00	No DMRs Submitted		
2/00	No DMRs Submitted		

1/00	2/7/00 Noncompliance Report		
	BOD ₅	50 mg/l (daily maximum)	344
	TSS	95 mg/l (daily maximum)	600
	BOD ₅	37 mg/l (monthly avg.)	327
	TSS	77 mg/l (monthly avg.)	595
6/99-4/99	NO DMRs SUBMITTED		
3/99 No DMR submitted¹	3/29/99 Noncompliance Report		
	pH max.	9.0 S.U	9.04
	TSS	95 mg/l (daily maximum)	208
	3/5/99 Noncompliance Report		
	BOD ₅	50 mg/l (daily maximum)	142
	TSS	95 mg/l (daily maximum)	204
2/99 No DMR submitted¹	2/19/99 Noncompliance Report		
	BOD ₅	50 mg/l (daily maximum)	68
1/99 No DMR submitted¹	1/4/99 Noncompliance Report		
	BOD ₅	50 mg/l (daily maximum)	237
	TSS	95 mg/l (daily maximum)	336
	1/20/99 Noncompliance Report		
	BOD ₅	50 mg/l (daily maximum)	90
	TSS	95 mg/l (daily maximum)	180
	1/28/99 Noncompliance Report		
	BOD ₅	50 mg/l (daily maximum)	138
	TSS	95 mg/l (daily maximum)	184
12/98 DMR 12/1/98 Effective date for new permit limits	BOD ₅	37 mg/l (monthly avg.)	234
	BOD ₅	50 mg/l (daily maximum)	237
	TSS	77 mg/l (monthly avg.)	351
11/98 DMR²	TSS	95 mg/l (daily maximum)	366
	BOD ₅	45 mg/l (daily maximum)	396
	TSS	125 mg/l (daily maximum)	440
	TEMP	32° C	89.45

10/98 DMR²	BOD ₅	45 mg/l (daily maximum)	338
	TSS	125 mg/l (daily maximum)	408
	PH max.	9.0 S.U	9.4
	pH min	6.0 S.U.	9.2

¹ Data from Respondent's noncompliance reports.

² Interim limits under Compliance Order WE-C-970-0109.

"These excursions of effluent limitations constitute violations of the terms and conditions of Compliance Order WE-C-97-0109, LPDES permit LA0003344 (Effluent Limitations: Part I, Page 2; Standard Conditions: Part III, Section A, Item 2), La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D., and LAC 33:IX.2355.A.

"The failure to submit DMRs is in violation of LPDES permit LA0003344 (Effluent Limitations: Part I, Page 3; Standard Conditions: Part III, Section D, Item 4), La. R.S. 30:2076 (A)(3), La. R.S. 30:2076 (D), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.4."

IV

On December 5, 2001, the Department and Respondent executed a Compliance Order and Consent Agreement, number WE-COA-01-0552. The allegations that form the basis of that enforcement action are:

"I

The Respondent owns and/or operates a vegetable canning facility located at 1581 La. Hwy. 114 near Hessmer in Avoyelles Parish, Louisiana. The Respondent is authorized to discharge certain quantities and/or qualities of wastewater into German Bayou, thence into Choctaw Bayou, both waters of the state, under the terms and conditions of Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0003344 issued on November 24, 1998, with an effective date of December 1, 1998, and an expiration date of November 30, 2003.

"II

On or about June 25, 1997, the Respondent was issued **COMPLIANCE ORDER NO. WE-C-97-0109**. On or about October 3, 1997, the Respondent was issued **AMENDED COMPLIANCE ORDER NO. WE-C-97-0109A**. On or about April 6, 1998, the Respondent was issued **NOTICE OF POTENTIAL PENALTY NO. WE-NP-98-0057**. On or about May 19, 2000, the Respondent was issued **NOTICE OF POTENTIAL PENALTY NO. WE-PP-00-0038**.

“III

An inspection conducted by the Department on or about September 10, 2001, and a subsequent file review conducted by the Department on or about October 23, 2001, revealed that the Respondent did cause or allow the unauthorized discharge of inadequately treated wastewater into waters of the state. Specifically, a review of the Respondent’s Noncompliance Reports (NCRs) and Discharge Monitoring Reports (DMRs) for the period from April 2000 through March 2001 revealed the following exceedances to LPDES permit LA0003344:

PARAMETER	PERMIT LIMITS	REPORTED RESULTS
March 2001		
TSS	77 (avg.) ¹	252
	95 (max.) ¹	288
	704 (avg.) ²	995
	869 (max.) ²	1303
February 2001		
BOD ₅	37 (avg.)	51
BOD ₅	50 (max.)	56
TSS	77 (avg.)	234
	95 (max.)	324
December 2000		
BOD ₅	37 (avg.)	58
	50 (max.)	85
TSS	77 (avg.)	135
	95 (max.)	160
November 2000		
BOD ₅	37 (avg.)	80
	50 (max.)	114
	339 (avg.)	678
	463 (max.)	972

TSS	77 (avg.)	137
	95 (max.)	160
	<i>704 (avg.)</i>	<i>1155</i>
	<i>869 (max.)</i>	<i>1337</i>
October 2000		
BOD ₅	37 (avg.)	80
	50 (max.)	114
	<i>339 (avg.)</i>	<i>678</i>
	<i>463 (max.)</i>	<i>972</i>
TSS	77 (avg.)	184
	95 (max.)	224
June 2000		
BOD ₅	37 (avg.)	117
BOD ₅	50 (max.)	125
TSS	77 (avg.)	193
	95 (max.)	260
May 2000		
BOD ₅	37 (avg.)	256
	50 (max.)	256
TSS	77 (avg.)	338
	95 (max.)	338
April 2000		
BOD ₅	37 (avg.)	181
	50 (max.)	181
TSS	77 (avg.)	390
	95 (max.)	390

¹ Units for the concentration limits and reported values are expressed in mg/L.

² *Italics* indicate loading results. Units for the loading limits and reported values are expressed in lbs/day.

These effluent violations are in violation of LPDES permit LA0003344 (Part I, and Part III, Section A.2), La. R.S. 30:2076 (A)(1)(a), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2355.A, and LAC 33:IX.2767.A.5.

“IV.

Also noted in the inspection conducted by the Department on or about September 10, 2001, and a subsequent file review conducted by the Department on or about October 23, 2001, was that the Respondent had failed to comply with work schedules and implementation schedules with regard to the wastewater treatment system as required by **COMPLIANCE ORDER NO. WE-C-97-0109** and **AMENDED COMPLIANCE ORDER NO. WE-C-97-0109A**. This is in violation of the said actions and La. R.S. 30:2076 (A)(3), and LAC 33:IX.501.A.

“V.

Further investigation by the Department on or about September 10, 2001, revealed that the Respondent did cause or allow the unauthorized discharge of inadequately treated wastewater into waters of the state. Laboratory results indicated that a wastewater sample taken from the discharge point contained a Total Suspended Solids (TSS) concentration of 390 mg/L. The unauthorized discharge of inadequately treated wastewater is in violation of LPDES permit LA0003344 (Part I, and Part III, Section A.2), La. R.S. 30:2076 (A)(1)(a), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2355.A, and LAC 33:IX.2767.A.5.

“VI.

Further investigation by the Department on or about September 10, 2001, revealed an adverse impact to aquatic biota in German Bayou and Choctaw Bayou, both waters of the state, as a result of the Respondent's unauthorized discharge. A count revealed approximately 10,000 dead and/or dying fish in these waterways downstream from the Respondent's outfall. This destruction of aquatic biota is in violation of LPDES permit LA0003344 (Part I, and Part III, Section A.2), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.1113.B.1.d, LAC 33:IX.1113.B.5, and LAC

33:IX.2355.A.

“VII.

On or about September 13, 2001, Respondent was issued **CEASE AND DESIST ORDER NO. WE-CD-01-0528**. Respondent subsequently ceased all unauthorized discharges into waters of the state as required by the Cease and Desist Order.”

V.

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

VI.

Nonetheless, the Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, in settlement of the claims set forth in this agreement, \$25,000 (twenty-five thousand dollars). Of that amount, \$3,050 (three-thousand fifty dollars) represents the costs to the Department for investigation and enforcement in connection with the above-described enforcement actions.

VII

Respondent, in addition to the penalty amount specified in Paragraph V above and as part of this Settlement, agrees to expend the amount of \$396,000.00 to implement and/or perform the following beneficial environmental projects (“BEPs”):

A. 1. INSTALLATION OF A RETURN LINE TO RECLAIM
WATER FROM COOLING SYSTEM.

Approximate Cost of Installation:

\$43,000.00

This BEP relates to the labor and materials to construct a new return line in order to reclaim water from the cooling system. It will result in an overall reduction in the amount of water presently withdrawn from the groundwater aquifer. Allen Canning presently pumps water from the aquifer via its own water well. Since Allen Canning has its own on-site water well, it has no monthly water bill

to pay to a city-owned/parish-owned water company. As such, this BEP will not reduce Allen Canning's present water bill, since Allen Canning does not receive a bill for water usage since it pumps its own water. However, this BEP will result in a significant reduction in the amount of water actually withdrawn from the groundwater aquifer. This BEP is not required by any permit or regulation.

2. DISSOLVED AIR UNIT FOR THE BOILER SYSTEM

Approximate Cost of Installation: \$105,000.00

This BEP involves the installation of a dissolved air unit as an addition to the existing boiler system at the facility. The purpose of this BEP is to increase the temperature of the incoming water, which will in turn increase the efficiency of the boiler and reduce NOX air emissions by a reduction in the amount of natural gas used in boiler operations. Accordingly, NOX emissions should be reduced resulting in improved ambient air quality. There is no regulatory requirement or permit requirement that mandates the installation of the dissolved air unit. The present water enters the boiler system at approximately 160°F. This BEP will result in the incoming water temperature rising to approximately 220°F. The resulting efficiencies in the boiler will have a positive impact on the air quality both for the workers at the Hessmer facility as well as the ambient air quality that would affect offsite residents.

3. ADDITION OF AERATION TO WASTE WATER TREATMENT PONDS THAT RECEIVE RAW WASTE WATER FOR INCREASED ODOR CONTROL.

Approximate Cost of Installation: \$163,000.00

This BEP deals with the purchase and installation of aerators to the existing wastewater treatment ponds that receive the wastewater discharge from the processing units at the Hessmer facility. This BEP, while not required by any permit condition or regulation, is intended to ensure that no fence line or off-site odor problems would occur during the processing of the crops, especially during the fall, which is the peak harvest for sweet potatoes.

4. MODIFICATION TO CLARIFIER TO REDUCE WATER USAGE.

Approximate Cost of Installation: \$85,000.00

This BEP deals with improvements that Allen Canning would make to its existing clarifier. Allen Canning presently pumps all water required for its operations from a groundwater aquifer. At present, there is no incentive for Allen Canning to reduce water usage due to the fact that Allen Canning does not pay a water bill to a city or parish water company. The present clarifier is operational and does not present any negative impact on current operations of the wastewater system; however, there are numerous water leaks that result in more water being used by the clarifier than would normally be the case. Accordingly, will improve the existing clarifier to include installation of a cushion tank. This will drastically reduce water usage and improve efficiencies in the clarifier. This BEP will result in a significant reduction in the amount of water presently

withdrawn by Allen Canning from the groundwater aquifer.

TOTAL OF ALL BEP'S \$396,000.00

- B. Respondent shall submit monthly reports regarding its progress on the projects. The first shall be due on the 5th of the month following the date the Department signs this Settlement. Monthly reports shall be submitted on the 5th of every month thereafter until the projects are completed. Each such monthly report shall include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each project through the date of the report. Upon completion of the all projects required under this Settlement, Respondent shall submit a final report to include a summary of all the information previously submitted and a total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described.
- C. If completion of the above-described BEPs costs Respondent less than \$396,000.00, then the Department, at its discretion, may require the Respondent to propose, in its final report, additional projects for the Department's approval in an amount equal to the difference between \$396,000.00 and the amount of money actually spent. In the alternative, the Department may require the Respondent to pay the difference to the Department in a single payment.

VIII

Respondent further agrees that the Department may consider the Notices of Potential Penalty, the Compliance Order and Consent Agreement, and the inspection reports upon which they are based, as well as this Settlement for the purpose of determining compliance history in connection

with any future enforcement or permitting action by the Department against Respondent, and in any such action the Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

IX

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement.

X

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act and the rules relating to beneficial environmental projects set forth in LAC 33:I.Chapter 25.

XI

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Avoyelles Parish, as well as in a newspaper of general circulation in that parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XII

The payment described in Paragraph VI above is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payment shall be by check or money order, made payable to the Department of Environmental Quality, and mailed to the attention of Darryl Serio, Office of Management and Finance, Department of Environmental Quality, Post Office Box 82231, Baton Rouge, Louisiana, 70884-2231.

XII

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XIII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

WITNESSES:

RESPONDENT

BY: _____

NAME: _____

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this ____ day of
, 20 ____, in _____.

NOTARY PUBLIC

WITNESSES:

STATE OF LOUISIANA
J. Dale Givens, Secretary
Dept. of Environmental Quality

BY: _____
R. Bruce Hammatt, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this ____ day of
_____, 20__, in Baton Rouge, Louisiana.

NOTARY PUBLIC

Approved:

R. Bruce Hammatt
R. Bruce Hammatt, Assistant Secretary